

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

ALLSTATE INSURANCE COMPANY,
ALLSTATE INDEMNITY COMPANY,
ALLSTATE PROPERTY & CASUALTY
INSURANCE COMPANY, and ALLSTATE
VEHICLE & PROPERTY INSURANCE
COMPANY,

Plaintiffs

v.

ELECTROLUX HOME PRODUCTS, INC.

Defendant

Case No.: 16-cv-04276 EGS

PLAINTIFFS' AMENDED PRE-TRIAL CONFERENCE MEMORANDUM

Plaintiffs, Allstate Insurance Company, Allstate Indemnity Company, Allstate Property & Casualty Insurance Company, and Allstate Vehicle & Property Insurance Company, (collectively "Allstate") by and through their attorneys, submit this Pre-Trial Conference Memorandum in accordance with the scheduling order and Local Rules.

I. BRIEF STATEMENT OF NATURE OF ACTION; BASIS ON WHICH JURISDICTION IS INVOKED

This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332 because the Plaintiffs are citizens of a state diverse from Defendant and the amount in controversy exceeds \$75,000.00 exclusive of interest, fees, and costs.

II. BRIEF STATEMENT OF THE FACTS

Over the course of four years, Allstate made payment on eight property damage claims arising from eight fires caused by Electrolux manufactured dryers.¹ All of the subject dryers

¹ The fires occurred on the following dates and at the following locations:

are “ball-hitch” style dryers manufactured by Electrolux between 2003 and 2008. Allstate brought these eight claims against Electrolux in a single subrogation action sounding in strict products liability and negligence seeking compensatory and punitive damages.

The basic facts of this case are largely undisputed. The fires originated in dryers manufactured by Electrolux and severely damaged Plaintiffs’ insureds’ homes (and the Bullene business property) and destroyed much of their possessions. The fires began behind the dryers’ rotating drum in a space hidden from view and inaccessible to users, where heat from the dryers’ heating elements and/or gas flames ignited lint. Flaming lint was pulled through the drum by negative pressure and into contact with flammable plastic components beyond the lint screen. The plastics subsequently ignited and provided the fuel necessary for the fires to burn hot enough and long enough to breach cabinet containment and spread beyond the dryers itself.

The crux of this case is whether the dryers were distributed in a defective condition. As to that, the parties obviously disagree.

Plaintiffs contend Electrolux’s ball-hitch dryers share common design defects. The perforated rear drum-wall permits combustible lint to migrate during the drying cycle into an

Brunilda and Anselmo Almodovar	March 24, 2016	1132 East 3 rd Street, Bethlehem, PA
Rachel Bullene	December 20, 2014	1255 Woodbourne Road, Levittown, PA
Cynthia and Benson Christie	April 10, 2016	200 Lincoln Avenue, Gulph Mills, PA
Robert and Delores Gray	November 4, 2014	804 Parker Place, Glen Mills, PA
Napoleon and Elizabeth Gutierrez	December 6, 2012	449 South 43 rd Street, Philadelphia, PA
Jennifer and Daniel Quinn	November 20, 2014	16 Jackson Street, Philadelphia, PA
Greg and Salome Venbrux	October 26, 2014	6653 Wilkins Avenue, Pittsburgh, PA
Marc and Lisa Weiss	October 16, 2015	10 Madison Court, Newtown, PA

inaccessible space behind the drum and in close proximity to the gas or electric heat source. Unintended lint ignition occurs regularly behind the dryer's drum during normal use. Once ignited, the dryer's negative pressure can pull the flaming lint back through the perforated rear drum-wall, through the rotating drum and cause ignition of the dryer's contents or, as more often occurs, downstream plastic components located in the dryer's base (specifically, the dryer's lint trap assembly, front duct, blower assembly and impeller). Ignition of the dryer's plastics causes smoke and flames to escape the dryer cabinet, which, in turn, exacerbates the risk of death, serious bodily injury, and property damage.

Electrolux was aware of the defects associated with its ball-hitch dryers, yet distributed these dryers anyway. Electrolux (through its testing, engineering studies, warranty data, lawsuits and hundreds of fire investigations) actually knew that its dryers were substantially more likely to fail in a fire condition due to internal lint ignition and cause serious injury or damage than dryers built and sold by other manufacturers. Despite its knowledge about the defects associated with its dryers, Electrolux failed to adequately warn users about the dryers' unique fire hazards rendering the product defectively designed.

In addition to knowledge of the defects themselves, Electrolux knew how to remedy them. Each fire was entirely preventable. A "bulkhead" style design prevents lint from accumulating near the heat source and subsequently igniting. This was common knowledge in the industry since the 1960s. The bulkhead design has long been the dominant design style on the market. It accounted for over 70% of the market in 1994 and now accounts for an estimated 95% of the market.

Electrolux also knew how to construct dryers with non-combustible plastic component parts in order to contain a fire to the dryer cabinet but consciously chose not to. Electrolux

could have constructed its dryers with steel component parts. Electrolux's internal documents reflect that using a steel air duct significantly reduced the amount of smoke emitted during the fire containment test. Nonetheless, in reckless disregard for the safety of its users, Electrolux never switched to a steel air duct.

By the time the subject fires occurred, Electrolux had secretly settled hundreds of dryer defect claims involving internal lint ignition fires, abandoned the defective design, demolished the factory where the subject dryers were assembled, fired all of the employees involved with the subject dryers' design and "lost" or discarded important testing records (such as videos of fire containment testing conducted by Electrolux during the product's development in the 1990s).

III. DAMAGES

A. Compensatory Damages

Allstate's compensatory damages are \$950,935.06, which represents the cost of restoring Allstate's insureds' real property to the pre-fire condition, cleaning and/or replacing at fair market value any personal property damaged and/or destroyed and any additional living expenses incurred as a result of the fire. All of the damages alleged are compensable under Pennsylvania law.

B. Punitive Damages

Allstate also seeks an award of punitive damages against Electrolux based on its demonstrated reckless indifference to the life and property for distributing the subject dryers notwithstanding actual knowledge of their defective nature and its subsequent failure to recall the dryers and/or otherwise issue post-sale warnings that would have prevented these fires from occurring. Electrolux's reckless conduct and defective product caused the damages alleged by

Allstate, like thousands of innocent consumers beforehand.

IV. WITNESS LIST

Allstate reserves the right to present testimony from any of the following witnesses:

1. Brunilda Almodovar (liability and damages)
1132 East 3rd Street
Bethlehem, PA
2. Anselmo Almodovar (liability and damages)
1132 East 3rd Street
Bethlehem, PA
3. Rachel Bullene (liability and damages)
6 McCarthy Drive
Langhorne, PA
4. Amanda Jackson (liability and damages)
61 Midway Avenue
Langhorne, PA
5. Cynthia Christie (liability and damages)
200 Lincoln Avenue
Gulph Mills, PA
6. Benson Christie, Sr. (liability and damages)
200 Lincoln Avenue
Gulph Mills, PA
7. Benson Christie, Jr. (liability and damages)
200 Lincoln Avenue
Gulph Mills, PA
8. Robert Gray (liability and damages)
804 Parker Place
Glen Mills, PA
9. Napoleon (Gerry) G. Gutierrez (liability and damages)
449 South 43rd Street
Philadelphia, PA
10. Elizabeth Gutierrez (liability and damages)
449 South 43rd Street
Philadelphia, PA

11. Jennifer Quinn (liability and damages)
136 Jackson Street
Philadelphia, PA
12. Daniel Quinn (liability and damages)
136 Jackson Street
Philadelphia, PA
13. Greg Venbrux (liability and damages)
6653 Wilkins Avenue
Pittsburgh, PA
14. Salome Venbrux (liability and damages)
6653 Wilkins Avenue
Pittsburgh, PA
15. Marc Weiss (liability and damages)
10 Madison Court
Newtown, PA
16. Lisa Weiss (liability and damages)
10 Madison Court
Newtown PA
17. Michael Stoddard (Expert) (liability)
Wright Group, Inc.
125 Rear Stanphyl Road
Uxbridge, MA 01569
18. William J. Vigilante, Jr., Ph.D., CPE (Expert) (liability)
Vigilante Forensic
200 Pembroke Circle
Phoenixville, PA 19460
19. Brian Ripley (liability)
c/o Cheryl Nicolson, Esquire
20. Carl King (liability)
c/o Cheryl Nicolson, Esquire
21. Peter Silman (liability)
c/o Chery Nicolson, Esquire
22. Steve Joerger (liability)
c/o Cheryl Nicolson, Esquire

23. Shelley Clausen (liability)
c/o Cheryl Nicolson, Esquire
24. Michael Ricklefs (liability)
c/o Cheryl Nicolson, Esquire
25. Ali Zarghami (liability)
c/o Cheryl Nicolson, Esquire
26. John Jergens (liability)
c/o Cheryl Nicolson, Esquire
27. Dale Bowles (liability)
c/o Cheryl Nicolson, Esquire
28. James Ruediger (liability)
c/o Cheryl Nicolson, Esquire
29. Helen Haney (liability)
c/o Cheryl Nicolson, Esquire
30. Gene Heskett (liability)
c/o Cheryl Nicolson, Esquire
31. Fred Pauk (liability)
c/o Cheryl Nicolson, Esquire
32. Barbara Linn (liability)
c/o Cheryl Nicolson, Esquire
33. Chris Adams (liability)
c/o Cheryl Nicolson, Esquire
34. Ed Anderson (liability)
c/o Cheryl Nicolson, Esquire
35. Jay Bjerke (liability)
c/o Cheryl Nicolson, Esquire
36. Scott Harder (liability)
c/o Cheryl Nicolson, Esquire
37. Matthew Cribbs (liability)
c/o Cheryl Nicolson, Esquire

38. Stephen Brown (liability)
c/o Cheryl Nicolson, Esquire
39. David Fuller (liability)
c/o Cheryl Nicolson, Esquire
40. Ron Masa (liability)
c/o Cheryl Nicolson, Esquire
41. Sharon A. Luarde, Esquire (liability)
c/o Cheryl Nicolson, Esquire
42. Shawn Hayes (liability)
c/o Cheryl Nicolson, Esquire
43. Danny Jerome (liability)
c/o Cheryl Nicolson, Esquire
44. Peter Patron (liability)
c/o Cheryl Nicolson, Esquire
45. Dean Brindle (liability)
c/o Cheryl Nicolson, Esquire
46. William Lange (liability)
c/o Cheryl Nicolson, Esquire
47. John Carroll (liability)
c/o Cheryl Nicolson, Esquire
48. Donna Edwards (liability)
c/o Cheryl Nicolson, Esquire
49. Daniel Ryherd (liability)
c/o Cheryl Nicolson, Esquire
50. Doug Mechaelsen (liability)
c/o Cheryl Nicolson, Esquire
51. Mary Hall Mechaelsen (liability)
c/o Cheryl Nicolson, Esquire
52. Pratish Kadakia (liability)
c/o Cheryl Nicolson, Esquire

53. Paul Bertrand (liability)
c/o Cheryl Nicolson, Esquire
54. Bill Topper (liability)
c/o Cheryl Nicolson, Esquire
55. Al Rauber (liability)
c/o Cheryl Nicolson, Esquire
56. Tom Mulder (liability)
c/o Cheryl Nicolson, Esquire
57. Sean Myers (liability)
c/o Cheryl Nicolson, Esquire
58. Stephen Powers (liability)
c/o Cheryl Nicolson, Esquire
59. Kevin Torberg (liability)
c/o Cheryl Nicolson, Esquire
60. Dennis Clouse (liability)
c/o Cheryl Nicolson, Esquire
61. Terry Fisher or other Boscov's representative (liability)
c/o Glenn Kimball, Esq.
O'Connor Kimball LLC
1500 JFK Blvd
Philadelphia, PA 19102
62. Mark Hughes, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Almodovar Claim)
63. Carzell Wynn, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Bullene Claim)
64. Dominic Campellone, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Christie Claim)
65. Elizabeth Guano, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Christie Claim)

66. Wendy McClure Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Christie Claim)
67. Marcia Hartz, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Gray Claim)
68. Cheryl Carr, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Gray Claim)
69. Paul Bottiglieri, Allstate Property & Casualty Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Gutierrez Claim)
70. Mark Meehan, Allstate Property & Casualty Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Gutierrez Claim)
71. Charmaine Grove, Allstate Property & Casualty Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Gutierrez Claim)
72. Fred Kiester, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Quinn Claim)
73. Tracy Miller, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Quinn Claim)
74. Nicole Montgomery, Allstate Vehicle & Property Insurance Company
(damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Venbrux Claim)
75. Alan Duddy, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Weiss)
76. Jeff Souza, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Weiss Claim)

77. Yvette Sienkiewicz, Allstate Insurance Company (damages)
c/o Raymond Mack, Esquire / Patrick Hughes, Esquire
(Weiss Claim)
78. Custodian of record for any person, entity or company involved in the
remediation of any of the property at issue.

Allstate reserve the right to amend and/or supplement this list of witnesses up to and including at the time of trial. Allstate further reserves the right to call any witness to testify at the time of trial who has been identified by any other party to this case in pre-trial disclosures, discovery responses, memoranda or otherwise.

V. EXHIBIT LIST

Allstate's Exhibit List is attached hereto, and incorporated by reference, at Exhibit A. Allstate reserves the right to alter, amend and add additional exhibits up to and including at the time of trial. Allstate further reserves the right to introduce into evidence any document and/or exhibit used and/or identified by any other party before and/or during trial at any time.

VI. ESTIMATED TRIAL TIME

Allstate estimates it will take approximately 7-10 days to present its case. Allstate anticipates trial will last approximately 14-21 days.

VII. SPECIAL COMMENTS (LEGAL ISSUES, STIPULATIONS, AMENDMENT OF PLEADINGS, OTHER APPROPRIATE MATTERS)

1. Burden Shifting to Defendant under the Risk Utility Test.

In *Tincher v. Omega Flex, Inc.*, 104 A.3d 328, 400 (Pa. 2014), the Pennsylvania Supreme Court strongly suggested that in circumstances where the risk-utility theory is used, the burden may be shifted to the defendant to demonstrate that an injury-producing product is not defective. *Tincher*, 104 A.3d at 408-09. The *Tincher* Court modeled Pennsylvania's new product liability landscape after California's product liability law, which shifts the burden to a

defendant in a risk utility case once plaintiff has made a *prima facie* showing that his injury was caused by the product's defective design. See *Barker v. Lull Eng'g Co.*, 573 P.2d 443 (1978); see also, *Judicial Council of California Civil Jury Instructions*, CACI No. 1204 (December 2015); See also, *Saller v. Crown Cork & Seal Co.*, 115 Cal.Rptr.3d 151, 162 (Cal. App. 2010) (“[o]nce the plaintiff has made a prima facie showing that his or her injury was caused by the product's defective design, the burden shifts to the defendant to establish that, in light of the relevant factors, the product is not defective”). While this issue is one of first impression since *Tincher*, shifting the burden to Electrolux in this matter is consistent with Pennsylvania's tort policy as well as the intent of the policies expressed in detail by the *Tincher* Court.

2. Substitution of Allstate's Insureds as Plaintiffs

Allstate intends to file a motion to amend the caption to substitute its insureds' names as the Plaintiffs. Allstate is now fully subrogated to the claims and interests of its insureds and is able to prosecute these claims in their names under the law.

VIII. OBJECTIONS AS TO AUTHENTICITY

Pursuant to Local Rule 16.1(d)(1)(a), Plaintiff objects to the authenticity of the following exhibits identified on Defendant's exhibit list. Plaintiff reserves the right to raise additional objections to Defendant's exhibits at the time of trial.

D-22 Almodovar – UL Certificate of Compliance

D-46 Bullene – ANSI/CSA Certificate of Compliance

D-67 Christie – ANSI-CSA Certificate of Compliance

D-90 Gray – UL Certificate of Compliance

D-111 Gutierrez – ANSI/CSA Certificate of Compliance

D-130 Quinn - – UL Certificate of Compliance

D-149 Venbrux – ANSI/CSA Certificate of Compliance

D-172 Weiss – ANSI/CSA Certificate of Compliance

D-183 Demonstrative Trial Exhibits – Frank Schwalje

D-184 File Materials Frank Schwalje

D-186 Demonstrative Exhibits – Kenneth Garside

D-189 Demonstrative Exhibits – J.P. Purswell, Ph.D.

D-190 File Materials of – J.P. Purswell, Ph.D.

D-192 Demonstrative Exhibits – John McHenry

D-195 Electrolux Dryer Production History 1988-2014

D-196 Electrolux-Laundry Division Production History – 1937-2007

D-197 Electrolux-AHAM Reported Data 2003-2009

D-198 “The Share of Market Picture”

D-199 “The Life Expectancy/Replacement Picture”

D-200 Industry Clothes Dryer US Shipment Data, AHAM Electric Dryers 2001-2005

D-201 Industry Clothes Dryer US Shipment Data, AHAM Electric Dryers 2005-2009

D-202 Industry Clothes Dryer US Shipment Data, AHAM Gas Dryers 2001-2006

D-203 Industry Clothes Dryer US Shipment Data, AHAM Gas Dryers 2005-2009

D-229 METI Decision

D-235 Thermal Degradation and Ignition Characteristics of Clothes Dryer Lint

D-236 FEMA’s U.S. Fire Administration National Fire Data Center, Report (2002-2004),
January 2007

D-237 FEMA’s U.S. Fire Administration National Fire Data Center, Report (2008-2010),
August 2012

- D-238 NFPA- The U.S. Home Products Reports (2002)
- D-239 NFPA – Home Fires Involving Clothes Dryers - 2009
- D-240 NFPA- Home Fires Involving Clothes Dryers – 2012
- D-241 NFPA – Home Fires Involving Clothes Dryers - 2017
- D-242 Product Safety Tips: Clean those lint traps
- D-243 Analysis of Industry Data on Clothes Dryer Fire Incidents, August 2002 (AHAM)
- D-244 Clothes Dryer Safety Fact Sheet (AHAM)
- D-248 CPSC – 2002-2004 Residential Fire Loss Estimates – July 2007
- D-249 CPSC – 2006-2008 Residential Fire Loss Estimates – July 2011
- D-250 CPSC Safety Alert – Overheated Clothes Dryers – Publication 5022
- D-251 CPSC – Evaluation of Using Indicators to Inform Consumers – June 2011
- D-252 CPSC – Consumer Opinion Forum, Survey #3, September 2010
- D-253 CPSC – Overheated Dryers can Cause Fires – June 2003
- D-254 CPSC – Clothes Dryer Fires – Market Information – November 1998
- D-255 CPSC – Data Summary Gas and Electric Dryers – May 1998
- D-256 CPSC March 12, 1999 Memorandum
- D-257 “Clothes Dryer Safety”
- D-258 Clothes Dryer Fire Safety Outreach Materials
- D-259 Fact Sheet 2006-2010 (NFPA)
- D-260 Fact Sheet 2010-2014 (NFPA)
- D-261 Dryers and Washing Machines (NFPA)
- D-262 Compression effects on pressure loss in flexible HVAC ducts
- D-263 ASHRAE Duct Design – Fluid Resistance

D-264 “Dryer Safety Tips”

D-265 “Prevent Dryer Fires”

D-266 Analyzing Lint Deposition Within Residence Electric Clothes Dryer

D-267 Assessing Electric Dryer Lint Fire Cause Scenarios

D-268 Video – Carl King June 8, 2012

D-269 Photographs – Carl King June 8, 2012

D-270 Dryer Drum Bearing Test Video

D-271 Dryer Drum Bearing Test Protocol

D-272 Dryer Drum Bearing Comparison Videos – Shop Vac

D-273 Dryer Drum Bearing Comparison Videos – Smoke Alarm

D-274 Webster City Lint Accumulation Testing Gas Dryer - Protocol

D-275 Webster City Lint Accumulation Testing Gas Dryer – Photographs (set up)

D-276 Webster City Lint Accumulation Testing Gas Dryer – Photographs (restricted)

D-277 Webster City Lint Accumulation Testing Gas Dryer – Photographs (normal)

D-278 Webster City Lint Accumulation Testing Gas Dryer – Data Logs (restricted)

D-279 Webster City Lint Accumulation Testing Gas Dryer – Data Logs (normal)

D-280 Webster City Lint Accumulation Testing Gas Dryer – End Data

D-281 Webster City Lint Accumulation Testing Electric Dryer – Protocol

D-282 Webster City Lint Accumulation Testing Electric Dryer – Photographs (set up)

D-283 Webster City Lint Accumulation Testing Electric Dryer – Photographs (restricted)

D-284 Webster City Lint Accumulation Testing Electric Dryer – Photographs (normal)

D-285 Webster City Lint Accumulation Testing Electric Dryer – Data Logs (restricted)

D-286 Webster City Lint Accumulation Testing Electric Dryer – Data Logs (normal)

D-287 Webster City Lint Accumulation Testing Electric Dryer – End Data

D-288 Back Pressure Chart

D-291 Front Seal Air Flowing Test

D-292 Front Seal Air Flow Testing Video

D-293 Front Seal Air Flow Testing Photographs

D-294 Dryer Vent Maintenance

D-295 Power Surges, Dirty Lint Traps and Other Hidden Home Dangers

D-296 Avoid Common Household Hazards

D-297 “Mayhem” Series Video

de LUCA LEVINE LLC

BY: Patrick A. Hughes

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ATTORNEYS FOR PLAINTIFFS

Date: January 23, 2018

CERTIFICATE OF SERVICE

I, Patrick A. Hughes, Esquire, hereby certify that a true and correct copy of Plaintiffs' Pre-Trial Conference Memorandum was served upon counsel listed below on the date indicated below by E-Mail.

Cheryl M. Nicolson, Esquire
Melissa L. Yemma, Esquire
Nicolson Law Group
Rose Tree Corporate Center II
1400 North Providence Road, Suite 6035
Media, PA 19063

de LUCA LEVINE, LLC

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ATTORNEYS FOR PLAINTIFFS

Date: January 23, 2019